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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

Federal Communications Commission
Office of Secretary
DOCKET FILE COPY ORIGINAL

In the Matter of)

Geographic Partitioning and Spectrum)
Disaggregation by Commercial Mobile)
Radio Services Licensees)

WT Docket No. 96-148

Implementation of Section 257 of the)
Communications Act – Elimination of Market)
Entry Barriers)

OPPOSITION OF GTE SERVICE CORPORATION

GTE Service Corporation on behalf of its telephone and wireless companies ("GTE"), pursuant to Section 1.429(f) of the Commission's Rules,¹ hereby submits its opposition to the petition for reconsideration of the *Report and Order and Further Notice of Proposed Rulemaking*² filed jointly by the National Telephone Cooperative Association and the Independent Alliance ("Petitioners") in the above-captioned proceeding.³

¹ 47 C.F.R. § 1.429(f).

² Geographic Partitioning and Spectrum Disaggregation by Commercial Mobile Radio Service Licensees, WT Docket No. 96-148, Implementation of Section 257 of the Communications Act – Elimination of Market Entry Barriers, GN Docket No. 96-113, *Report and Order and Further Notice of Proposed Rulemaking* (released December 20, 1996) (hereinafter "R&O").

³ Geographic Partitioning and Spectrum Disaggregation by Commercial Mobile Radio Service Licensees, WT Docket No. 96-148, Implementation of Section 257 of the Communications Act – Elimination of Market Entry Barriers, GN Docket No. 96-113, Petition for Reconsideration of the National Telephone Cooperative Association and the Independent Alliance, filed February 5, 1997 (hereinafter "the Petition").

Petitioners ask the Federal Communications Commission (“FCC” or “Commission”) to reconsider its decision in the *R&O* to modify Section 24.714 of the Commission’s Rules⁴ to permit broadband personal communications service (“PCS”) licensees to partition their licenses to any eligible entity. Petitioners take exception to the Commission’s decision to eliminate rural telephone companies’ exclusive ability to obtain a partitioned broadband PCS license.

GTE supports the FCC’s decision to eliminate the rural telephone company requirement for partitioning broadband PCS licenses and urges the Commission to deny the Petition.

I. Discussion

Petitioners argue that in changing its rules to allow entities other than rural telephone companies (“rural telcos”) to acquire broadband PCS spectrum through geographic partitioning, the Commission has abandoned its implementation of a direct Congressional mandate to provide opportunities for rural telcos to offer PCS services.⁵ Petitioners argue, further, that the decision in the *R&O* is arbitrary and will unfairly and adversely affect Petitioners’ interests.

A. Petitioners Raise No New Facts

Section 1.429(b) of the Commission’s Rules requires that, to be successful, petitions for reconsideration of rulemaking decisions must rely “on facts which have not previously been presented to the Commission.”⁶ Petitioners, however, raise no new

⁴ 47 C.F.R. § 24.714.

⁵ Petition at 2.

⁶ 47 C.F.R. § 1.429(b).

facts in support of their Petition. Petitioners' argue that in eliminating the exclusive ability of rural telcos to participate in PCS spectrum partitioning, the FCC has failed to abide by its statutory obligation to provide opportunities to rural telcos. In support of this argument, Petitioners give the following evidence: (1) the Commission's previous rule and reasons given by the Commission for that rule; (2) the language in Section 309(j) of the Communications Act ("the Act");⁷ (3) language in Commission's orders predating the *R&O*; (4) and statements regarding the effect of new rules on rural telcos.⁸

Each of these arguments, however, was previously considered and rejected by the Commission in the *R&O*. In paragraph 10 of the *R&O*, the Commission lists the arguments made by rural telco commenters. Each of the arguments made now by NTCA are listed in that paragraph.⁹ In paragraphs 15 and 16 of the *R&O*, the Commission discusses its reasons for adopting the new rule and its reason for rejecting each of the arguments raised by rural telcos.¹⁰

Because Petitioners fail to raise any new arguments or allege any new facts in the Petition, they have failed to meet the requirements of Section 1.429(b) of the Commission's Rules. Accordingly, the Petition should be denied.

⁷ 47 U.S.C. § 309(j).

⁸ Primarily, Petitioners allege that because the rules were adopted after the deadline for participation in the PCS auctions had passed, they could not adjust their business plans in order to take advantage of the other PCS opportunities that existed for rural telcos. Petition at 8.

⁹ *R&O* at 11-12 (¶ 10).

¹⁰ *Id.* at 13-14 (¶ 15-16).

B. The Rules Relied Upon by Petitioner Do Not Apply to Geographic Partitioning

Petitioners argue that by adopting a rule allowing any qualified entity to participate in broadband PCS spectrum partitioning, the Commission has failed to abide by the provisions of Section 309(j) of the Act. By its terms, however, Section 309(j) places obligations upon the FCC only with respect to design of competitive bidding procedures. The rule that Petitioner seeks to overturn, however, concerns geographic partitioning of broadband PCS licenses, not competitive bidding. Accordingly, the cited provisions cannot be the basis for overturning the allegedly offensive rule.

C. Rural Telcos Have Ample Opportunity to Participate in PCS

Petitioners argue that the *R&O* violates Section 309(j) of the Communications Act. That section requires the Commission to design competitive bidding procedures to disseminate licenses in accordance with four objectives. In particular, Petitioner argues that by eliminating the exclusive right of rural telephone companies to obtain partitioned broadband PCS licenses, the FCC has denied rural telephone companies an opportunity to participate in PCS.¹¹

The FCC did not violate the cited statutory provisions. Even assuming the cited provisions apply to geographic partitioning of already-auctioned spectrum, the Commission found that it has provided ample opportunities for rural telcos by making them eligible to participate in the entrepreneur block broadband PCS auctions.¹²

¹¹ Petition at 3-9.

¹² *R&O* at 13 (¶ 15).

Petitioners also argue that they developed business plans with respect to broadband PCS spectrum relying on rural telcos' exclusive right to obtain partitioned spectrum. They claim that the rule change occurred too late for them to alter their business plans and register for any of the broadband PCS auctions.¹³

GTE disagrees. First, although the FCC did not adopt its final rules in this proceeding until December 13, 1996, it adopted a proposal to change its broadband PCS partitioning rule on June 28, 1996.¹⁴ Parties were therefore on notice prior to the registration date for the last broadband PCS auctions, that partitioning likely would be opened to all qualified parties. While the timing of the *Notice* admittedly did not leave rural telcos much time to react to the impending rule change prior to registering for the broadband PCS auctions, surely any entity believing that the rule change would significantly harm its chances of obtaining a PCS license would have considered registering to participate in those auctions.

GTE also questions whether the rule change had any material affect on rural telcos' ability to obtain partitioned broadband PCS spectrum. Broadband PCS licensees are not required to partition their licenses. Therefore, the argument that the rule change somehow denies Petitioner's member companies an opportunity to obtain a partitioned license is entirely speculative.

¹³ Petition at 6-8.

¹⁴ Geographic Partitioning and Spectrum Disaggregation by Commercial Mobile Radio Service Licensees, WT Docket No. 96-148, Implementation of Section 257 of the Communications Act – Elimination of Market Entry Barriers, GN Docket No. 96-113, *Notice of Proposed Rulemaking*, 11 FCC Rcd 10187 (1996) (hereinafter "*Notice*") (the *Notice* was adopted June 28, 1996, released July 15, 1996).

In any event, the Commission previously addressed this argument in the *R&O*.

There the Commission stated

[w]e are unpersuaded that our action herein will harm the rural telcos' business plans. Under the new rules adopted herein, rural telcos will be fully able to obtain partitioned PCS licenses, as they were previously. Moreover, in many instances, rural telcos are likely to be in a superior position to obtain partitioned licenses. As the rural telco commenters acknowledge, they are uniquely qualified to provide PCS service to rural areas, because they possess the existing infrastructure and local marketing knowledge in these regions.¹⁵

For these reasons, GTE contends that the Commission's Rules provide ample opportunity for rural telcos to participate in broadband PCS.

D. The Commission's Decision Was Not Arbitrary

Finally, Petitioners argue that the FCC's decision to adopt the open partitioning rule is arbitrary.¹⁶ In particular, Petitioners argue that the Commission "offered no explanation why, particularly where no threat of legal or constitutional challenge is at stake, the plans of rural designated entities did not warrant consideration equivalent to that accorded women- and minority-owned C Block applicants."¹⁷

Contrary to this argument, GTE believes that the record in this proceeding demonstrates that the Commission engaged in reasoned decisionmaking in adopting the new broadband PCS partitioning rules.

In analyzing the Commission's decisionmaking in this proceeding, it is important to recognize that Section 309(j) requires the FCC to design competitive bidding to

¹⁵ *R&O* at 14 (¶ 16).

¹⁶ Petition at 2.

¹⁷ *Id.* at 7-8.

further a number of objectives.¹⁸ Thus, in addition to the obligations cited by Petitioner, the Commission is charged with recovering for the public a portion of the value of the public spectrum resource, and ensuring the efficient use of the electromagnetic spectrum. The Commission's decisionmaking must therefore be judged in terms of how well the Commission balanced the various goals it has been charged with advancing. The Commission has stated previously, in the context of reviewing its policies to promote diversity of ownership, that "[w]e do not believe the statute further requires the Commission to promote diversity at the cost of delaying much-needed service that could otherwise be provided to the public."¹⁹ The FCC, in this proceeding, has provided opportunities for rural telephone companies and other designated entities and properly balanced each of the statutory objectives.²⁰

The Commission's decisions in this proceeding were responsive to the record and were based on reasoned analysis. A review of the record on the issue of geographic partitioning reveals that most parties supported extending geographic partitioning to any eligible party.²¹ Indeed, the Commission notes in the *R&O*, that the only parties opposing broadened eligibility for partitioning are the rural telcos.²² Most

¹⁸ *R&O* at 13-14. See also *In Re* Deferral of Licensing of MTA Commercial Broadband PCS, *Memorandum Opinion and Order*, PP Docket No. 93-253, ET Docket No. 92-100, FCC 96-139 (released April 1, 1996) (hereinafter ("*MO&O*") at 7 (¶ 10).

¹⁹ *MO&O* at 7-8 (¶ 10).

²⁰ See *R&O* at 13-14 (¶ 15).

²¹ *R&O* at 10 (¶ 7).

²² *Id.* at 10 (¶ 8).

parties commented that open eligibility for partitioning would bring benefits to the public such as increased opportunities for small businesses, increased competition for new services, more efficient spectrum use, and rapid deployment of service in underserved areas.²³ In reaching its decision, the Commission properly balanced the benefits that most commenters believed would result from liberalizing geographic partitioning, versus the detriments argued by the rural telcos. Ultimately, the Commission ruled that the detriments were overstated by the rural telcos and did not outweigh the substantial benefits presented by removal of a barrier to entry to PCS service. Accordingly, GTE does not believe the FCC's decision to amend its broadband PCS partitioning eligibility rule was arbitrary.

II. Conclusion

GTE opposes NTCA and the Independent Alliance's ("Petitioners") petition for reconsideration of the Commission's broadband PCS partitioning eligibility rule.

Petitioners did not allege any new facts or evidence that merit reconsideration of the previous decision. In adopting the rule change, the Commission carefully balanced its statutory obligations and the public interest. The rule change adopted is responsive to

²³ *Id.* at 10 (¶ 7).

the record in this proceeding and the product of reasoned analysis. Accordingly, the petition for reconsideration should be denied.

Respectfully submitted,

GTE Service Corporation and its telephone and
wireless companies

By Andre J. Lachance

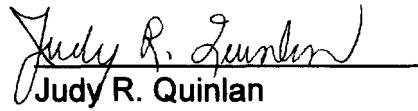
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April 2, 1997

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Certificate of Service

I, Judy R. Quinlan, hereby certify that copies of the foregoing "Opposition of GTE Service Corporation" have been mailed by first class United States mail, postage prepaid, on April 2, 1997 to all parties of record.


Judy R. Quinlan